



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,204	01/04/2002	Vincent De Laforcade	05725.1006-00	3472

7590

06/30/2003

Thomas L. Irving
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
1300 I Street, N.W.
Washington, DC 20005-3315

EXAMINER

FOSTER, JIMMY G

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 06/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

Office Action Summary

Application No.
10/035,204

Applicant(s)
De Laforcade

Examiner
Jimmy G. Foster

Art Unit
3728



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-13, 15, 16, 18-20, 23-43, 46-48, 50-52, and 55-63 is/are rejected.
- 7) ☒ Claim(s) 9, 10, 14, 17, 21, 22, 44, 45, 49, 53, and 54 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121:

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 1.5
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

Art Unit: 3728

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8, 11-13, 15, 16, 18, 20, 23, 25, 27-43, 46-48, 50, 52 and 55-63 are rejected under 35 U.S.C. § 102(b) as being anticipated by Gonclaves (5,209,565). The assembly of Gonclaves includes a system for mixing two products. The system includes first and second containers 2,3, each including a coupler (8,21) and a closure cap/stopper/cover (9,16). The container 2 further includes a film seal/tearable cap 7. The container 3 further includes a cutter at collar 19. Container 3 also comprises a neck at 28, a hollow shaft at 20, and a head at capsule 15. Container 2 constitutes a flexible tube.

Regarding any of claims 1-8, 11, 12, 15, 16, 25, 27-33, 35-43, 46, 47, 55-61 and 63 of Applicant, the second container may be considered to be defined by container 2 of Gonclaves, the seal may be considered to be defined by the film seal 7, and first container may be considered to be defined by the container 3, and the safety member may be considered to be defined by the cover 16. The safety member/cover 16 is blunt and is capable of abutting with the seal 7 when the stopper 9 is removed from the second container since the seal 7 is disposed on the edge of the neck 6 of the container 2 (col. 3, lines 25-26). Additionally, the cover 16 also may be said to project beyond the opening of the first container (see Fig. 1).

Art Unit: 3728

The cover 16 defines a safety member because when the cover is on the first container 3, it prevents the seal 7 from being punctured by the cutter 19.

Regarding claims 13, 18, 20, 48, 50 and 52, the collar 19 may alternatively be considered to define a safety member since the collar will be resisted by the seal 7 somewhat before the collar 19 cuts the seal.

Regarding any of claims 1, 3-6, 11, 23, 27, 28, 30-32, 34-36-41, 46, 55, 56, 58-60, 62 and 63 of Applicant, the assembly/system may of Gonclaves may be considered in an alternative manner. The second container may be considered to be defined by container 3 of Gonclaves, the seal may be considered to be defined by the cover 16, and first container may be considered to be defined by the container 2, and the safety member may be considered to be defined by the stopper 9. The cover 16 seals the opening of the container 3. The stopper 9 is blunt and is capable of pressing against the exterior of the seal 16. In the closed position the stopper 9 projects beyond the opening of the container 2.

The stopper acts as a safety member since it prevents the cutting of element 7 while the stopper is closed on the container 2 and since the stopper otherwise prevents the opening of the container 2.

3. Claims 1, 18, 19, 36, 50 and 51 are rejected under 35 U.S.C. § 102(b) as being anticipated by Taylor et al (5,072,872). In the reference of Taylor et al, there is provided a first container 2, a second container 6, a coupler 22 on the first container, a coupler 23 on the second container,

Art Unit: 3728

and a seal 9 on the second container. The dish 18 of the first container includes a nozzle 5. A stop 12 covers the opening of the nozzle.

Upon breaking or the stop off the nozzle the open tip is disposed in the seal inlet 8. The nozzle becomes connected by snap-fit with respect to elements rib and groove elements 36,37. Therefore there will be some resistance to the nozzle entering the inlet 8 to the extent in which the nozzle displaces the seal/displacing cap 9. Accordingly, the examiner asserts that the nozzle of Taylor et al defines a safety member since the tip of the nozzle will press against the seal 9 somewhat before the seal is displaced. The stop 12 protects the nozzle/safety member 5 but is frangibly removed therefrom.

4. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claim 24 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Gonclaves (above). The material of polyethylene and its properties, such as flexibility and weldability, are known. Selection of a known material based upon its suitability for the intended use thereof generally will not support patentability. In re Leshin, 125 USPQ 416. Accordingly, to have used any known material for the tube of

Art Unit: 3728

Gonclaves, including polyethylene, such as for the suitability with respect to flexibility or weldability, would have been obvious.

6. Claims 26 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Gonclaves (above). The material of aluminum and its properties, such as gas impermeability or frangibility, are known. Selection of a known material based upon its suitability for the intended use thereof generally will not support patentability. In re Leshin, 125 USPQ 416.

Accordingly, to have used any known material for the tube of Gonclaves, including aluminum, such as for the suitability with respect to gas impermeability, would have been obvious.

Moreover, to have used any known material for the seal of Gonclaves, including aluminum, such as for the suitability with respect to frangibility, would have been obvious.

7. Claims 9, 10, 14, 17, 21, 22, 44, 45, 49, 53 and 54 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. For contacting the PTO by phone, the following contact numbers may be used:

For tracking of papers and association of papers with cases --
Customer Service. . . (703)306-5648

For matters regarding examination -- Examiner:
Jim Foster (703)308-1505

For faxing of correspondence:
DRAFT Fax amendments only-(703)308-7769

Serial Number: 10/035,204

-6-

Art Unit: 3728

(Examiner should be notified of fax)

FORMAL Fax correspondence-(703)305-3579 or 305-3580

RIGHT FAX- Before Final . . (703) 872-9302

After Final . . . (703) 872-9303

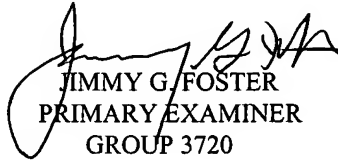
(The examiner ordinarily will not retrieve
formal correspondence)

For petitions:

Before the Examiner . (703)308-1505

Before the Group Director . (703)308-3872

Other petitions . . . (703)305-9282


JIMMY G. FOSTER
PRIMARY EXAMINER
GROUP 3720

JGF

June 23, 2003